

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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SHEILA LYONS, DVM and )  
HOMECOMING FARMS INC., )  
Plaintiffs, )  
v. ) Civil Action No. 1:11-cv-12192  
THE AMERICAN COLLEGE OF )  
VETERINARY SPORTS MEDICINE )  
AND REHABILITATION, INC. and )  
THE AMERICAN VETERINARY )  
MEDICAL ASSOCIATION, INC., )  
Defendants. )  
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)

**DECLARATION OF DAVID A. KLUFT, ESQ.**  
**IN SUPPORT OF OPPOSITION TO MOTION TO STRIKE**

I, David A. Kluft, declare and state as follows:

1. I am a partner at Foley Hoag LLP. I represent the American College of Veterinary Sports Medicine and Rehabilitation (the “College”) in the above-captioned matter.
2. On September 22, 2012, I visited the Internet Archive at <http://archive.org>.
3. The Internet Archive has created a service known as the Wayback Machine. The Wayback Machine makes it possible to surf more than 150 billion pages stored in the Internet Archive's web archive. Visitors to the Wayback Machine can search archives by URL (i.e., a website address). If archived records for a URL are available, the visitor will be presented with a list of available dates. The visitor may select one of those dates, and then begin surfing on an archived version of the Web.
4. On September 22, 2012, I searched the Wayback Machine's archive for the web page <http://www.homecomingfarm.org>. I was presented with a series of dates on which that

site was archived, including June 14, 2004. I created a screen capture of the archived page, a true and accurate copy of which is attached hereto as Exhibit 1.

5. On September 22, 2012, I also searched the Wayback Machine's archive for the web page <http://home.comcast.net/~homecomingfarm/page1.htm>. I was presented with a series of dates on which that site was archived, including June 9, 2004. I created a screen capture of the archived page, a true and accurate copy of which is attached hereto as Exhibit 2.
6. The College is in the process of requesting affidavits of authenticity from the Internet Archive with regard to these pages, per that organization's procedures at <http://archive.org/legal>.
7. Sheila Lyons' counsel did not confer with me about her Motion to Strike pursuant to Local Rule 7.1, nor did counsel provide any notice under the safe harbor provisions of Fed. R. Civ. P. 11(c)(2). During a scheduling conference call on September 12, 2012, Lyons' counsel made a vague reference to a motion to strike on the grounds of "res judicata," but refused to identify which of the two defendant's pleading such a motion would seek to strike, and did not mention Fed. R. Civ. P. 11.
8. On or about September 24, 2012, I caused a staff member from my firm to go to the Suffolk County Superior Court and retrieve documents filed in the appeal from Lyons' 2008 licensing matter, Superior Court No. 09-4035-F. That matter concerned the allegation that Lyons' had held herself out as having a Massachusetts veterinary license when in fact she did not. In paragraph 19 of her complaint in that matter, Lyons alleged that she controlled the website <http://www.homecomingfarm.com>. On September 29, 2012, I performed a "WHOIS" search for that site, which confirmed that Lyons has controlled the site since 2002. Attached as Exhibit 3 is a true and accurate copy of an excerpt from Lyons' verified Superior Court complaint, followed by a true and accurate copy of the WHOIS search results.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

/S/ David A. Kluft  
David A. Kluft

Dated: 10/1/12

### **Certificate of Service**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on the above date.

/s/ David A. Kluft